
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Plaintiff,

**DEFENDANTS' NOTICE OF
DEFENSES PURSUANT TO
FED. R. CRIM. P. 12.3(a)**

v.

Case No. 22-cr-00277 (NEB-TNL)

Mekfira Hussein, and
Abduljabar Hussein,

Defendants.

Defendants Mekfira Hussein and Abduljabar Hussein, by and through their undersigned attorneys, hereby provide notice of Defendants' intention to assert an entrapment-by-estoppel defense, as required by Fed. R. Crim. P. 12.3(a),¹ and submit the following information in support:

Agencies Involved (Rule 12.3(a)(2)(A)): Feeding Our Future (FOF) (exercising actual and/or apparent government authority explicitly delegated from Minnesota Department of Education (MDE) to FOF pursuant to 7 C.F.R. § 226.6(b)(4)(iii)(A)).

¹ Fed. R. Crim. P. 12.3 establishes requirements for disclosure of a public-authority defense, requiring that notice must be made pursuant to the rule "within the time provided for filing a pretrial motion." The rule does not on its face apply to disclosure of an entrapment-by-estoppel defense, which differs from a public-authority defense. *See United States v. Achter*, 52 F.3d 753, 755 (8th Cir. 1995) (contrasting public-authority and entrapment-by-estoppel defenses). But the Eighth Circuit has held that entrapment-by-estoppel requires the same pretrial notice under Rule 12.3. *See United States v. Xiong*, 914 F.3d 1154, 1159-60 (8th Cir. 2019) ("The public authority and entrapment by estoppel defenses require pretrial disclosures, including notice and a list of witnesses, under Federal Rule of Criminal Procedure 12.3.").

Agency Members Involved (Rule 12.3(a)(2)(B)): Abdikerm Eidleh, Hadith Omar, Amy Bock, other Feeding Our Future employees whose names have not yet been disclosed by the Government; one or more Minnesota Department of Education employees whose identities are not yet known pending further discovery.

Time (Rule 12.3(a)(2)(C)): “October 2020 through in or about 2022.” *See* ECF No. 19, ¶ 66.

Upon request of the Government, Defendants will disclose additional information as required by Fed. R. Crim. P. 12.3(a)(4).

Respectfully submitted,

Date: July 8, 2024

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Date: July 8, 2024

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